
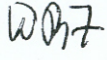


STATE OF WISCONSIN
Department of Health and Family Services
Division of Children and Family Services

To: Area Administrators/Human Service Area Coordinators
Bureau Directors
County Departments of Community Programs Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Section Chiefs/Licensing Chiefs
Tribal Chairpersons/Human Services Facilitators

From:  Burnie Bridge 
Administrator

Re: 2005 Wisconsin Act 104 Changes to Laws on Domestic Abuse Arrests

2005 Wisconsin Act 104 changes the law relating to domestic abuse arrests. These changes are primarily directed at law enforcement, but the Department believes this information will be useful to child welfare staff.

Mandatory Arrest

Wisconsin Act 104 requires a law enforcement officer to arrest and take a person into custody if the person has engaged in domestic abuse, the person's actions constitute a crime, and the officer has a reasonable basis for believing that:

- ◆ Continued domestic abuse against the alleged victim is likely, or
- ◆ There is evidence of physical injury to the alleged victim, or
- ◆ The person is the predominant aggressor.

The provision on predominant aggressor was added by Wisconsin Act 104. In addition, Act 104 provides that if a law enforcement officer identifies the predominant aggressor, it is generally not appropriate for the officer to arrest anyone involved in the domestic abuse incident other than the predominant aggressor. That provision does not apply if the person must be arrested because the officer has probable cause to believe the person has violated a temporary restraining order or injunction, or is in violation of any contact prohibition following an earlier domestic abuse arrest.

Determining "Predominant Aggressor"

Wisconsin Act 104 replaces the term "primary physical aggressor" with the term "predominant aggressor." It defines the predominant aggressor as the most significant aggressor, but not necessarily the first aggressor. It requires that the officer consider the following criteria when determining who the predominant aggressor is in a particular incident:

- ◆ the history of domestic abuse between the parties if the officer can ascertain it;
- ◆ statements made by witnesses;
- ◆ the relative degree of injury inflicted by and on the parties;
- ◆ the extent to which each person present appears to fear any party;
- ◆ whether any party is threatening or has threatened future harm against another party or another family or household member; and
- ◆ whether either party acted in self-defense or in defense of any other person.

These changes clarify that a victim of domestic abuse who is defending herself or himself, or defending another person such as a child, is not the aggressor and should not be arrested. It corrects confusion around the term "primary," which was sometimes misunderstood to mean that whomever started the altercation was the aggressor.

Release of Person Arrested or Citation

Wisconsin Act 104 provides that a law enforcement officer may not release a person arrested for a domestic abuse incident until the person has posted bail or appeared before a judge unless the officer is satisfied that there are insufficient grounds to issue a criminal complaint. The Act also prohibits a law enforcement officer from issuing a citation to a person instead of arresting the person in situations where the officer is required to arrest the person for a domestic abuse incident.

Law Enforcement Agency Policies

Act 104 requires that law enforcement agencies develop policies for domestic abuse cases that are consistent with the new statutory requirements. The policies must, among other requirements, include a statement emphasizing that, in most circumstances, a law enforcement officer should arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's action constitute the commission of a crime, and a statement that an officer's decision as to whether or not to arrest a person in a domestic abuse incident may not be based on the consent of the victim to any subsequent prosecution. Policies must have a statement discouraging, but not prohibiting, the arrest of more than one person.

The effective date of Wisconsin Act 104 is April 1, 2006.

REGIONAL OFFICE CONTACT: Area Administrator

CENTRAL OFFICE CONTACT: Sharon Lewandowski
DHFS/DCFS/BPP
P.O. Box 8916
Madison, WI 53708-8916
Phone: 608-266-0700
E-mail: LEWANSM@dhfs.state.wi.us

MEMO WEB SITE: http://dhfs.wisconsin.gov/dcfs_info

ACT 104 WEBSITE: <http://www.legis.state.wi.us/2005/data/acts/05Act104.pdf>

c: County CPS Supervisors
Director of State Courts Office
Indian Child Welfare Contact Persons

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